

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, *et al.*

Debtors.¹

PROMESA Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**UNITED STATES' ACKNOWLEDGMENT OF CONSTITUTIONAL
CHALLENGE AND NOTICE OF POTENTIAL PARTICIPATION**

The United States hereby acknowledges receipt of Notice of Constitutional Challenge, dated August 7, 2017, filed by Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, and Lex Claims, LLC (“Aurelius”), in which Aurelius notified the Attorney General of the United States of its constitutional challenge to the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), Pub. L. No. 114-187, 130 Stat. 549 (2016), on the grounds that the appointment of the Board members of the Financial Oversight and Management Board for Puerto Rico (“the Oversight Board”) violates the Appointment Clause and separation-

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284) (Last Four Digits Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

of-powers principles of the U.S. Constitution.² *See* Notice of Constitutional Challenge (“Notice”), ECF No. 933, at 1-2.

The United States has a statutory right to intervene in any federal court action in which the constitutionality of an Act of Congress is drawn into question. *See* 28 U.S.C. § 2403(a). Pursuant to Federal Rule of Civil Procedure 5.1, the United States may intervene within sixty days after a Notice of Constitutional Challenge has been filed, unless the Court sets a later date. *See* Fed R. Civ. P. 5.1(c). Before that time period expires, the Court “may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.” *Id.* By operation of Rule 5.1, the current deadline for the United States to determine whether it will defend the constitutionality of PROMESA in this Title III proceeding is October 6, 2017. Accordingly, the United States will notify the Court by that date whether it will defend the constitutionality of PROMESA, and if the United States does intend to do so, it will file its brief in support of the constitutionality of PROMESA within thirty days thereafter.

Aurelius has submitted a proposed order seeking to shorten the United States’ deadline to respond. *See* Ex. A to Notice. Aurelius’ reason is that the Oversight Board—which it alleges to be a federal agency—is already a party to this proceeding and, further, that several other federal agencies, such as the Environmental Protection Agency and the Internal Revenue Service, are either creditors or interested parties in this proceeding. *See* Notice at 2–3. This Court should reject Aurelius’ request to shorten the United States’ time to respond for the following reasons.

As the Court is aware, PROMESA was enacted against the backdrop of the worst fiscal crisis in Puerto Rico’s history and the Oversight Board, created under that statute, is charged

² The notice was filed pursuant to Federal Rule of Bankruptcy Procedure 9005.1, which was made applicable to these proceedings by 48 U.S.C. § 2170 and incorporates by reference Federal Rule of Civil Procedure 5.1.

with enormous responsibilities to tackle Puerto Rico's debt crisis. By seeking to have the Oversight Board declared unconstitutional, Aurelius seeks to void any action taken by the Board since its inception and to end what it characterizes as "the largest and most complicated bankruptcy proceeding in the Nation's history." *See* Objection and Motion of Aurelius to Dismiss Title III Petition ("Motion to Dismiss"), ECF No. 913, at 2; *see also* Motion of Aurelius for Relief from the Automatic Stay, ECF No. 914. The magnitude of the relief sought by Aurelius cannot be overstated and, thus, the United States should be allowed sufficient time to determine its position on the constitutional issue Aurelius has raised.

The Solicitor General of the United States is responsible for determining whether the United States should defend the constitutionality of an Act of Congress. *See* 28 C.F.R. § 0.21 ("The Solicitor General may in consultation with each agency or official concerned, authorize intervention by the Government in cases involving the constitutionality of acts of Congress."). That determination, requires sufficient time to consult with affected governmental agencies and components.

The United States will notify this Court by October 6, 2017, whether it intends to defend the constitutionality of PROMESA, and if so, the United States will file its brief in support of the statute's constitutionality within thirty days thereafter.

This 15th day of August 2017.

Respectfully submitted,

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/s/ Jean Lin

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August 2017, I caused a true and correct copy of the foregoing Notice of Appearance to be filed with the Clerk of the Court using the CM/ECF system which will generate electronic notification to all CM/ECF participants in these cases.

/s/ Jean Lin
Jean Lin